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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 16, 2022

SEAN F. McAVOY, CLERK

9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON
11

12 UNITED STATES OF AMERICA,

Case No.: 1:22-CR-02070-SAB-1

13 Plaintiff,

Plea Agreement

14 v.

15 CLYDE ISAAC KELLY,

16 Defendant.

17 Plaintiff United States of America, by and through Vanessa R. Waldref,
18 United States Attorney the Eastern District of Washington, and Richard C. Burson,
19 Assistant United States Attorney for the Eastern District of Washington, and
20 Defendant Clyde Isaac Kelly ("Defendant"), both individually and by and through
21 Defendant's counsel, Ben Hernandez, agree to the following Plea Agreement.

22 1. Guilty Plea and Maximum Statutory Penalties

23 Defendant agrees to enter a plea of guilty to the Indictment filed on July 12,
24 2022, which charges Defendant with Felon in Possession of a Firearm, in violation
25 of 18 U.S.C. §§ 922(g)(1), 924(a)(2), a Class C felony.

26 Defendant understands that the following potential penalties apply:

- 27 a. a term of imprisonment of up to 10 years;
28 b. a term of supervised release of up to 3 years;
c. a fine of up to \$250,000; and

1 d. a \$100 special penalty assessment.

2 2. Supervised Release

3 Defendant understands that if Defendant violates any condition of
4 Defendant's supervised release, the Court may revoke Defendant's term of
5 supervised release, and require Defendant to serve in prison all or part of the term
6 of supervised release authorized by statute for the offense that resulted in such term
7 of supervised release without credit for time previously served on postrelease
8 supervision, up to the following terms:

- 9 a. 5 years in prison if the offense that resulted in the term of
10 Supervised Release is a class A felony,
11 b. 3 years in prison if the offense that resulted in the term of
12 Supervised Release is a class B felony, and/or
13 c. 2 years in prison if the offense that resulted in the term of
14 Supervised Release is a class C felony.

15 Accordingly, Defendant understands that if Defendant commits one or more
16 violations of supervised release, Defendant could serve a total term of
17 incarceration greater than the maximum sentence authorized by statute for
18 Defendant's offense or offenses of conviction.

19 3. The Court is Not a Party to this Plea Agreement

20 The Court is not a party to this Plea Agreement and may accept or reject it.
21 Defendant acknowledges that no promises of any type have been made to
22 Defendant with respect to the sentence the Court will impose in this matter.

23 Defendant understands the following:

- 24 a. sentencing is a matter solely within the discretion of the Court;
25 b. the Court is under no obligation to accept any recommendations
26 made by the United States or Defendant;
27 c. the Court will obtain an independent report and sentencing
28 recommendation from the United States Probation Office;

- d. the Court may exercise its discretion to impose any sentence it deems appropriate, up to the statutory maximum penalties;
- e. the Court is required to consider the applicable range set forth in the United States Sentencing Guidelines, but may depart upward or downward under certain circumstances; and
- f. the Court may reject recommendations made by the United States or Defendant, and that will not be a basis for Defendant to withdraw from this Plea Agreement or Defendant's guilty plea.

4. Potential Immigration Consequences of Guilty Plea

If Defendant is not a citizen of the United States, Defendant understands the following:

- a. pleading guilty in this case may have immigration consequences;
- b. a broad range of federal crimes may result in Defendant's removal from the United States, including the offense to which Defendant is pleading guilty;
- c. removal from the United States and other immigration consequences are the subject of separate proceedings; and
- d. no one, including Defendant's attorney or the Court, can predict with absolute certainty the effect of a federal conviction on Defendant's immigration status.

Defendant affirms that Defendant is knowingly, intelligently, and voluntarily pleading guilty as set forth in this Plea Agreement, regardless of any immigration consequences that Defendant's guilty plea may entail.

5. Waiver of Constitutional Rights

Defendant understands that by entering this guilty plea, Defendant is knowingly and voluntarily waiving certain constitutional rights, including the

1 following:

- 2 a. the right to a jury trial;
- 3 b. the right to see, hear and question the witnesses;
- 4 c. the right to remain silent at trial;
- 5 d. the right to testify at trial; and
- 6 e. the right to compel witnesses to testify.

7 While Defendant is waiving certain constitutional rights, Defendant
8 understands that Defendant retains the right to be assisted by an attorney through
9 the sentencing proceedings in this case and any direct appeal of Defendant's
10 conviction and sentence, and that an attorney will be appointed at no cost if
11 Defendant cannot afford to hire an attorney.

12 Defendant understands and agrees that any defense motions currently
13 pending before the Court are mooted by this Plea Agreement, and Defendant
14 expressly waives Defendant's right to bring any additional pretrial motions.

15 6. Elements of the Offense

16 The United States and Defendant agree that in order to convict Defendant of
17 Felon in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2),
18 the United States would have to prove the following beyond a reasonable doubt.

- 19 a. *First*, on April 27, 2022, within the Eastern District of
20 Washington, Defendant knowingly possessed a firearm;
- 21 b. *Second*, the firearm had been shipped from one state to another
22 or between a foreign nation and the United States;
- 23 c. *Third*, at the time Defendant possessed the firearm, Defendant
24 had been convicted of a crime punishable by imprisonment for
25 a term exceeding one year; and
- 26 d. *Fourth*, at the time Defendant possessed the firearm, Defendant
27 knew he had been convicted of a crime punishable by
28 imprisonment for a term exceeding one year.

1 7. Factual Basis and Statement of Facts

2 The United States and Defendant stipulate and agree to the following: the
3 facts set forth below are accurate; the United States could prove these facts beyond
4 a reasonable doubt at trial; and these facts constitute an adequate factual basis for
5 Defendant's guilty plea.

6 The United States and Defendant agree that this statement of facts does not
7 preclude either party from presenting and arguing, for sentencing purposes,
8 additional facts that are relevant to the Sentencing Guidelines computation or
9 sentencing, unless otherwise prohibited in this Plea Agreement.

10 On April 27, 2022, Yakima Police Department ("YPD") officers responded
11 to a 911 call reporting that Defendant was in possession of a firearm in
12 Defendant's residence. A YPD detective reviewed Defendant's criminal history
13 and determined that Defendant had been previously convicted of crime punishable
14 by a term of imprisonment exceeding one year. YPD officers went to Defendant's
15 residence and spoke with the 911 caller on the phone. Officers asked the caller to
16 come out of the residence. The 911 caller came outside with the lower frame of a
17 pistol and explained that Defendant had taken the gun apart. An officer knocked on
18 the door to Defendant's residence and Defendant came outside. Defendant was
19 detained. Meanwhile, without being requested to do so by officers, the reporting
20 party went back into the residence and came outside with the upper half of the
21 firearm and handed it to a YPD detective. The reporting party told the detective
22 that Defendant had the gun for the past several days. Another resident told officers
23 the same.

24 Defendant was arrested on state criminal charges, which were subsequently
25 dropped in favor of federal prosecution.

26 At the time Defendant was in possession of the above-mentioned firearm, he
27 had been previously convicted of an offense punishable by a term of imprisonment
28 exceeding one year; namely, on or about February 1, 2022, Defendant was

1 convicted of second-degree manslaughter in violation of Revised Code of
2 Washington Section 9A.32.070 and sentenced to 25 months of imprisonment.

3 The above-mentioned firearm was examined by a Special Agent with the
4 Bureau of Alcohol, Tobacco, Firearms and Explosives, who determined that
5 because the firearm was located in the state of Washington, it had traveled in and
6 affected interstate or foreign commerce.

7 8. The United States' Agreements

8 The United States Attorney's Office for the Eastern District of Washington
9 agrees not to bring additional charges against Defendant based on information in
10 its possession at the time of this Plea Agreement that arise from conduct that is
11 either charged in the Indictment or identified in discovery produced in this case,
12 unless Defendant breaches this Plea Agreement before sentencing.

13 9. United States Sentencing Guidelines Calculations

14 Defendant understands and acknowledges that the United States Sentencing
15 Guidelines ("U.S.S.G." or "Guidelines") apply and that the Court will determine
16 Defendant's advisory range at the time of sentencing, pursuant to the Guidelines.
17 The United States and Defendant agree to the following Guidelines calculations.

18 a. Base Offense Level

19 The United States and Defendant agree that the base offense level for Felon
20 in Possession of a Firearm is 14. U.S.S.G. § 2K2.1(a)(6).

21 b. Acceptance of Responsibility

22 The United States will recommend that Defendant receive a two-level (or
23 three level, if the court determines the Total Offense Level to be greater than 15)
24 downward adjustment for acceptance of responsibility, pursuant to U.S.S.G.
25 § 3E1.1(a), (b), if Defendant does the following:

- 26 i. accepts this Plea Agreement;
- 27 ii. enters a guilty plea at the first Court hearing that takes
- 28 place after the United States offers this Plea Agreement;

- 1 iii. demonstrates recognition and affirmative acceptance of
- 2 Defendant's personal responsibility for Defendant's
- 3 criminal conduct;
- 4 iv. provides complete and accurate information during the
- 5 sentencing process; and
- 6 v. does not commit any obstructive conduct.

7 The United States and Defendant agree that at its option and on written
8 notice to Defendant, the United States may elect not to recommend a reduction for
9 acceptance of responsibility if, prior to the imposition of sentence, Defendant is
10 charged with, or convicted of, any criminal offense, or if Defendant tests positive
11 for any controlled substance.

12 c. No Other Agreements

13 The United States and Defendant have no other agreements regarding the
14 Guidelines or the application of any Guidelines enhancements, departures, or
15 variances. Defendant understands and acknowledges that the United States is free
16 to make any sentencing arguments it sees fit, including arguments arising from
17 Defendant's uncharged conduct, conduct set forth in charges that will be dismissed
18 pursuant to this Agreement, and Defendant's relevant conduct.

19 d. Criminal History

20 The United States and Defendant have no agreement and make no
21 representations about Defendant's criminal history category, which will be
22 determined by the Court after the United States Probation Office prepares and
23 discloses a Presentence Investigative Report.

24 10. Incarceration

25 The United States agrees to recommend a sentence no higher than within the
26 Guidelines, as calculated by the Court; provided that, the United States will
27 recommend not more than 21 months of imprisonment.

28 Defendant agrees to recommend a sentence no lower than 12 months.

1 11. Supervised Release

2 The United States and Defendant each agree to recommend 3 years of
3 supervised release. Defendant agrees that the Court's decision regarding the
4 conditions of Defendant's Supervised Release is final and non-appealable; that is,
5 even if Defendant is unhappy with the conditions of Supervised Release ordered by
6 the Court, that will not be a basis for Defendant to withdraw Defendant's guilty
7 plea, withdraw from this Plea Agreement, or appeal Defendant's conviction,
8 sentence, or any term of Supervised Release.

9 The United States and Defendant agree to recommend that in addition to the
10 standard conditions of supervised release imposed in all cases in this District, the
11 Court should also impose the following conditions:

- 12 a. The United States Probation Officer may conduct, upon
13 reasonable suspicion of a violation of supervised release, and
14 with or without notice, a search of Defendant's person,
15 residences, offices, vehicles, belongings, and areas under
16 Defendant's exclusive or joint control.
- 17 b. Defendant shall participate and complete such drug testing and
18 drug treatment programs as the Probation Officer directs.
- 19 c. Defendant shall complete mental health evaluations and
20 treatment, including taking medications prescribed by the
21 treatment provider. Defendant shall allow reciprocal release of
22 information between the Probation Officer and the treatment
23 provider. Defendant shall contribute to the cost of treatment
24 according to the Defendant's ability.

25 12. Criminal Fine

26 The United States and Defendant may make any recommendation
27 concerning the imposition of a criminal fine. Defendant acknowledges that the
28 Court's decision regarding a fine is final and non-appealable; that is, even if

1 Defendant is unhappy with a fine ordered by the Court, that will not be a basis for
2 Defendant to withdraw Defendant's guilty plea, withdraw from this Plea
3 Agreement, or appeal Defendant's conviction, sentence, or fine.

4 13. Judicial Forfeiture

5 Defendant agrees to voluntarily forfeit any and all right, title and interest he
6 has in the following listed assets in favor of the United States, including, but not
7 limited to:

- 8 - a Star Model "BM" 9mm caliber pistol bearing serial number 28247.

9 Defendant acknowledges that the firearm covered by this agreement is
10 subject to forfeiture as property facilitating or involved in illegal conduct in
11 violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), Felon in Possession of a Firearm,
12 and is therefore forfeitable to the United States pursuant to 18 U.S.C. § 924(d)(1)
13 and 28 U.S.C. § 2461(c).

14 The Defendant agrees to take all steps as requested by the United States to
15 pass clear title to the assets to the United States and to testify truthfully in any
16 forfeiture proceeding.

17 The Defendant agrees to hold all law enforcement and the United States, its
18 agents, and its employees harmless from any claims whatsoever arising in
19 connection with the seizure and forfeiture of any asset(s) covered by this
20 agreement. Defendant consents to the forfeiture and disposal of assets without
21 further notice.

22 The Defendant further agrees to waive all constitutional, equitable and
23 statutory challenges in any manner (including direct appeal, habeas corpus, or any
24 other means) to any forfeiture carried out in accordance with this Plea Agreement
25 on any grounds, including that the forfeiture constitutes an excessive fine or
26 punishment. Defendant knowingly and voluntarily waives his right to a jury trial
27 on the forfeiture of the asset(s). Defendant waives oral pronouncement of
28

1 forfeiture at the time of sentencing, and any defects that may pertain to the
2 forfeiture.

3 14. Mandatory Special Penalty Assessment

4 Defendant agrees to pay the \$100 mandatory special penalty assessment to
5 the Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C.
6 § 3013.

7 15. Payments While Incarcerated

8 If Defendant lacks the financial resources to pay the monetary obligations
9 imposed by the Court, Defendant agrees to earn money toward these obligations by
10 participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

11 16. Additional Violations of Law Can Void Plea Agreement

12 The United States and Defendant agree that the United States may, at its
13 option and upon written notice to the Defendant, withdraw from this Plea
14 Agreement or modify its sentencing recommendation if, prior to the imposition of
15 sentence, Defendant is charged with or convicted of any criminal offense or tests
16 positive for any controlled substance.

17 17. Waiver of Appeal Rights

18 Defendant understands that Defendant has a limited right to appeal or
19 challenge Defendant's conviction and the sentence imposed by the Court.

20 Defendant expressly waives all of Defendant's rights to appeal Defendant's
21 conviction and the sentence the Court imposes; provided that, Defendant may
22 appeal any sentence imposed by the Court greater than 24 months.

23 Defendant expressly waives Defendant's right to appeal any fine or term of
24 supervised release imposed by the Court.

25 Defendant expressly waives the right to file any post-conviction motion
26 attacking Defendant's conviction and sentence, including a motion pursuant to 28
27 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from
28

1 information not now known by Defendant and which, in the exercise of due
2 diligence, Defendant could not know by the time the Court imposes sentence.

3 Nothing in this Plea Agreement shall preclude the United States from
4 opposing any post-conviction motion for a reduction of sentence or other attack
5 upon the conviction or sentence, including, but not limited to, writ of habeas
6 corpus proceedings brought pursuant to 28 U.S.C. § 2255.

7 18. Compassionate Release

8 In consideration for the benefits Defendant is receiving under the terms of
9 this Plea Agreement, Defendant expressly waives Defendant's right to bring any
10 motion for Compassionate Release other than a motion arising from one of the
11 specific bases set forth in this paragraph of this Plea Agreement. The United States
12 retains the right to oppose, on any basis, any motion Defendant files for
13 Compassionate Release.

14 The only bases on which Defendant may file a motion for Compassionate
15 Release in the Eastern District of Washington are the following:

16 a. Medical Condition of Defendant

- 17 i. Defendant is suffering from a terminal illness (i.e., a
18 serious and advanced illness with an end of life
19 trajectory). A specific prognosis of life expectancy (i.e.,
20 a probability of death within a specific time period) is not
21 required. Examples include metastatic solid-tumor
22 cancer, amyotrophic lateral sclerosis (ALS), end-stage
23 organ disease, and advanced dementia; or
24 ii. Defendant is suffering from a serious physical or medical
25 condition, a serious functional or cognitive impairment,
26 or deteriorating physical or mental health because of the
27 aging process that substantially diminishes the ability of
28 the defendant to provide self-care within the environment

1 of a correctional facility and from which Defendant is not
2 expected to recover.

3 b. Age of Defendant

4 i. Defendant is at least 65 years old, is experiencing a
5 serious deterioration in physical or mental health because
6 of the aging process; and has served at least 10 years or
7 75 percent of Defendant's term of imprisonment,
8 whichever is less; or

9 ii. Defendant is at least 70 years old and has served at least
10 30 years in prison pursuant to a sentence imposed under
11 18 U.S.C. § 3559(c) for the offense or offenses for which
12 Defendant is imprisoned.

13 c. Family Circumstances

14 i. The caregiver of Defendant's minor child or children has
15 died or become incapacitated, and Defendant is the only
16 available caregiver for Defendant's minor child or
17 children; or

18 ii. Defendant's spouse or registered partner has become
19 incapacitated, and Defendant is the only available
20 caregiver for Defendant's spouse or registered partner.

21 d. Subsequent Reduction to Mandatory Sentence

22 i. Defendant pleaded guilty to an offense which, on the date
23 of Defendant's guilty plea, carried a mandatory minimum
24 sentence; and

25 ii. after the entry of judgment, the length of the mandatory
26 minimum sentence for Defendant's offense of conviction
27 was reduced by a change in the law; and
28

1 iii. the application of the reduced mandatory minimum
2 sentence would result in Defendant receiving a lower
3 overall sentence.

4 e. Ineffective Assistance of Counsel

- 5 i. Defendant seeks Compassionate Release based on a
6 claim of ineffective assistance of counsel arising from
7 information that Defendant both
8 2. did not know at the time of Defendant's guilty
9 plea, and
10 3. could not have known, in the exercise of due
11 diligence, at the time the Court imposed sentence.

12 19. Withdrawal or Vacatur of Defendant's Plea

13 Should Defendant successfully move to withdraw from this Plea Agreement
14 or should Defendant's conviction be set aside, vacated, reversed, or dismissed
15 under any circumstance, then:

- 16 a. this Plea Agreement shall become null and void;
17 b. the United States may prosecute Defendant on all available
18 charges;
19 c. The United States may reinstate any counts that have been
20 dismissed, have been superseded by the filing of another
21 charging instrument, or were not charged because of this Plea
22 Agreement; and
23 d. the United States may file any new charges that would
24 otherwise be barred by this Plea Agreement.

25 The decision to pursue any or all of these options is solely in the discretion
26 of the United States Attorney's Office.

27 Defendant agrees to waive any objections, motions, and/or defenses
28 Defendant might have to the United States' decisions to seek, reinstate, or reinitiate

1 charges if a count of conviction is withdrawn, set aside, vacated, reversed, or
2 dismissed, including any claim that the United States has violated Double
3 Jeopardy.

4 Defendant agrees not to raise any objections based on the passage of time,
5 including but not limited to, alleged violations of any statutes of limitation or any
6 objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
7 Amendment.

8 20. Integration Clause

9 The United States and Defendant acknowledge that this document
10 constitutes the entire Plea Agreement between the United States and Defendant,
11 and no other promises, agreements, or conditions exist between the United States
12 and Defendant concerning the resolution of the case.

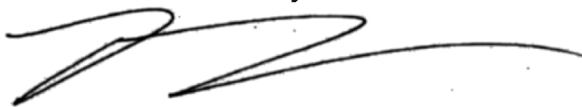
13 This Plea Agreement is binding only on the United States Attorney's Office
14 for the Eastern District of Washington, and cannot bind other federal, state, or local
15 authorities.

16 The United States and Defendant agree that this Agreement cannot be
17 modified except in a writing that is signed by the United States and Defendant.

18 Approvals and Signatures

19 Agreed and submitted on behalf of the United States Attorney's Office for
20 the Eastern District of Washington.


21 Vanessa R. Waldref
22 United States Attorney


23 

24 Richard C. Burson
25 Assistant United States Attorney

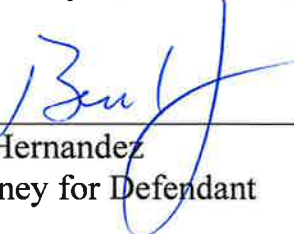
Oct. 17, 022
Date


1 I have read this Plea Agreement and I have carefully reviewed and discussed
2 every part of this Plea Agreement with my attorney. I understand the terms of this
3 Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and
4 voluntarily. I have consulted with my attorney about my rights, I understand those
5 rights, and I am satisfied with the representation of my attorney in this case. No
6 other promises or inducements have been made to me, other than those contained
7 in this Plea Agreement. No one has threatened or forced me in any way to enter
8 into this Plea Agreement. I agree to plead guilty because I am guilty.

9
10 
11 Clyde Isaac Kelly
12 Defendant


Date

13 I have read the Plea Agreement and have discussed the contents of the
14 agreement with my client. The Plea Agreement accurately and completely sets
15 forth the entirety of the agreement between the parties. I concur in my client's
16 decision to plead guilty as set forth in the Plea Agreement. There is no legal
17 reason why the Court should not accept Defendant's guilty plea.

18 
19 Ben Hernandez
20 Attorney for Defendant


Date